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TALKING POINTS RE AMENDMENTS TO THE ROLE OF THE AMBASSADOR LEGISLATION (H.R. 12598)

The Senate has proposed including the proviso "notwithstanding any other provision of law" in the existing statutory formulation on the Role of the Ambassador legislation (22 U.S.C. 2680a) so that the provision would read in pertinent part as appears on the attached sheet (amendatory language underlined). The following points are relevant:

--Even though the prefatory "Under the direction of the President" language would remain unchanged, the amendatory provision could be construed as a derogation of existing Presidential authority. Inclusion of the amendatory "Notwithstanding..." language could be construed to mean that the President's authority to determine what information may be withheld from an Ambassador is ministerial only rather than discretionary; i.e., the President would only be able to decide the manner in which the Ambassador would be informed and not the crucial issue of whether and to what extent the Ambassador should be so informed.

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--The proposed additional language could be viewed by liaison services and other intelligence sources as further weakening of the Government's resolve to limit dissemination of information regarding intelligence sources and methods.

--Arguments that the additional language would not affect existing procedures and requirements are specious. If this were true, there would be no need for the amendment; and there is always a presumption that any provision in a statute is there to serve a purpose (in this case to change procedures established to date controlling the relationship between the CIA Chief of Station and the U.S. Ambassador). Moreover, there is already clear legislative history indicating the amendment is intended to "solve" CIA-State problems that have arisen notwithstanding the existing statute (in fact, there are no such problems).

--Arguments that the amendment does not change existing procedures would be temporary assurances and subject to change at any time.

--As a practical matter, the new language would result in questions concerning access to information having to go to the President with greater frequency and on less significant issues than at present; this would be administratively burdensome.

--There are other statutory provisions that could be affected by inclusion of the amendatory language; for example, provisions of the Privacy Act protecting information against disclosure.

Section 119 (of H.R. 12598). "Authority and Responsibility of the United States Chief of Missions."

Note: Section 119 of H.R. 12598 as passed by the Senate would amend Section 16 of the act entitled "An act to provide certain basic authority for the Department of State" (22 U.S.C. 2680a) to read as follows:

"SEC. 16. Under the direction of the President -

* * *

(3) any department or agency having officers or employees in a country shall, notwithstanding any other provision of law, keep the United States Ambassador to that country fully and currently informed with respect to all activities and operations of its officers and employees in that country, and shall insure that all of its officers and employees, except for personnel under the command of a United State area military commander, comply fully with all applicable directives of the Ambassador."

TALKING POINTS PAPER RE CASE-ZABLOCKI ACT AMENDMENTS (H.R. 12598)

Section 501 of H.R. 12598 concerns the determination and reporting of "international agreements" pursuant to the so-called "Case-Zablocki Act" (1 U.S.C. 112b). Among other things, section 501 would amend 1 U.S.C. 112b by providing as follows:

1. Oral agreements would have to be reduced to writing and thereafter reported to the Congress if determined to be "international agreements."
2. No "international agreement" could be signed or concluded without the prior approval of the Secretary of State or the President.
3. Rules and regulations necessary to carry out the Case-Zablocki Act shall be issued by the President, through the Secretary of State.

The following points are relevant:

--Not only is the inclusion of oral agreements in Section 501 inconsistent with the present law and procedures developed thereunder, but it would also prove to be unacceptably burdensome in practice and impossible to enforce. This problem would result from the difficulty inherent in determining what activities or arrangements must be reduced to writing, and from the fact that the number of such matters that would have to be so considered in order to determine whether they constitute international agreements would be extremely large.

--The oral agreements provision could have a serious negative impact on intelligence activities involving liaison relationships with foreign intelligence and security services. As a result of such a statutory provision, foreign intelligence and security services would almost certainly question the ability of the U.S. Government to securely maintain the terms of such authorized relationships and would reexamine their willingness to deal with the U.S

--Insofar as concerns intelligence matters conducted pursuant to the authorities of the DCI, requiring prior approval of such agreements by the Secretary of State is inappropriate.

--Placing a statutory burden on the President for reviewing and approving intelligence activities conducted by the CIA which, in the first instance is under the NSC, of which the President is a member (50 U.S.C. 402(a)), is unnecessary and inappropriate.

--It is also inappropriate that the President be burdened with a statutory requirement to report in detail and in writing annually to the Congress merely to inform the Congress that certain agreements were transmitted "late." (Subsection 501(b).)

--Subsection 501(d) inappropriately specifies that the President shall issue rules and regulations to implement 1 U.S.C 112b "through the Secretary of State." This provision is unnecessary and could lead to confusion as it is the ultimate responsibility of the President to issue the relevant rules and regulations in consultation with those of his officers as he deems appropriate, not necessarily limited to the Secretary of State.

TALKING POINTS PAPER ON SUBSECTION 15(b),
THIRD AGENCY RULE AMENDMENT (H.R. 12598)

Senator McGovern proposed a number of amendments to H.R. 12598 including one that would in effect require Federal agencies and departments with information within the jurisdiction of the Foreign Relations and International Relations Committees to provide that information regardless of the third agency rule; this amendment was adopted. The specific provision in the basic Department of State enabling legislation so amended would read as follows (new language underlined):

"SEC. 15 (b). The Department of State shall keep the [Foreign Relations and International Relations Committees]... fully and currently informed with respect to all activities and responsibilites within the jurisdiction of these Committees. Any Federal department, agency, or independent establishment shall furnish any information (notwithstanding the department, agency, or independent establishment of origin) requested by either such Committee relating to any such activities or responsibilties."

With regard to Section 15(b) the following points should be made:

--The amendatory provision is unnecessary since it does not give the Committees any further right to information than they already possess.

--The provision may be counter productive since it arugably may encourage some agencies to restrict State Department access to information, thereby inhibiting the Department's ability to fulfill other statutory requirements.

--The provision could in practice remove an important step in the process of providing Executive Branch material to the Congress; namely, review of material by the originating agency so as to ensure that the information is placed in the context of other relevant related or background information.